

To:

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PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No. PCT/EP2004/011336	International filing date (day/month/year) 11.10.2004	Priority date (day/month/year) 09.10.2003
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International Patent Classification (IPC) or both national classification and IPC
A23G1/00, A23G3/00

Applicant
NESTEC S.A.

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material:
 in written format
 in computer readable form
 - c. time of filing/furnishing:
 contained in the international application as filed.
 filed together with the international application in computer readable form.
 furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	6-8
	No: Claims	1-5,9-15
Inventive step (IS)	Yes: Claims	
	No: Claims	1-15
Industrial applicability (IA)	Yes: Claims	1-15
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Reference is made to the following documents:

D1: WO 93/19615 A (BSN) 14 October 1993 (1993-10-14)

D2: GB 139 256 A (LUIS WIRTZ) 4 March 1920 (1920-03-04)

2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of independent claims 1, 9 and 10 is not new in the sense of Article 33(2) PCT.

The document D1 discloses chocolate coating on bakery goods which are rendered heat stable by a film coating (see abstract). Therefore, the subject-matter of claims 1, 9 and 10 is already known from D1.

N.B. D2 also discloses film coated chocolate products, which are disclosed therein to be rendered heat stable. Therefore, the subject-matter of claim 1 is also known from D2 (Article 33(2) PCT).

3. Dependent claims 2-8 and 11-14 are only allowable when related to an allowable independent claim.
4. Claim 15 defines a use of the product of e.g. claim 1 in a product according to e.g. claims 9 or 10 and characterises this use by a functional feature. Since the products of any of claims 1, 9 and 10 are already known from D1, it has to be assumed that the use as defined in claim 15 is not new, either (Article 33(2) PCT).